

(ii) Additional mitigation measures as contained in a LOA issued under §§216.106 and 217.157 of this chapter.

(b) [Reserved]

**§217.156 Requirements for monitoring and reporting.**

(a) Visual monitoring program:

(1) Port Dolphin shall employ, at minimum, two qualified PSOs during specified construction-related activities at each site where such activities are occurring. All PSOs must be selected in conformance with NMFS' minimum qualifications, as described in the preamble to this rule, and must receive training sponsored by Port Dolphin, with topics to include, at minimum, implementation of the monitoring protocol, identification of marine mammals, and reporting requirements. The PSOs shall be responsible for visually locating marine mammals in the shutdown and disturbance zones and, to the extent possible, identifying the species. PSOs shall record, at minimum, the following information:

(i) A count of all marine mammals observed by species, sex, and age class, when possible.

(ii) Their location within the shutdown or disturbance zone, and their reaction (if any) to construction activities, including direction of movement.

(iii) Activity that is occurring at the time of observation, including time that activity begins and ends, any acoustic or visual disturbance, and time of the observation.

(iv) Environmental conditions, including wind speed, wind direction, visibility, and temperature.

(2) Port Dolphin shall sponsor a training course to designated crew members assigned to vessels associated with construction activities or support of operations who will have responsibilities for watching for marine mammals. This course shall cover topics including, but not limited to, descriptions of the marine mammals found in the area, mitigation and monitoring requirements contained in a LOA, sighting log requirements, provisions of NMFS Vessel Strike Avoidance Measures and Reporting for Mariners, and procedures for reporting injured or dead marine mammals.

(3) Monitoring shall be conducted using appropriate binoculars, such as 8x50 marine binoculars. When possible, digital video or still cameras shall also be used to document the behavior and response of marine mammals to construction activities or other disturbances.

(4) Each PSO shall have two-way communication capability for contact with other PSOs or work crews. PSOs shall implement shut-down or delay procedures when applicable by calling for the shut-down to the equipment/vessel operator.

(5) A GPS unit and/or appropriate range finding device shall be used for determining the observation location and distance to marine mammals, vessels, and construction equipment.

(b) Acoustic monitoring program:

(1) Acoustic monitoring must be conducted in accordance with the NMFS-approved acoustic monitoring plan.

(2) Port Dolphin shall provide NMFS with empirically measured source level data for designated sources of sound associated with Port construction and operation activities and shall verify distances to relevant sound thresholds. Measurements shall be carefully coordinated with sound-producing activities.

(3) [Reserved]

(c) Reporting—Port Dolphin must implement the following reporting requirements:

(1) A report of data collected during monitoring shall be submitted to NMFS following conclusion of construction activities. Subsequent reports concerning Port operations shall be submitted annually. The reports shall include:

(i) All data required to be collected during monitoring, as described under §217.156(a) of this chapter, including observation dates, times, and conditions;

(ii) Correlations of observed behavior with activity type and received levels of sound, to the extent possible; and

(iii) Estimations of total incidental take of marine mammals, extrapolated from observed incidental take.

(2) Port Dolphin shall also submit a report(s) concerning the results of all

acoustic monitoring. Acoustic monitoring reports shall include information as described in a NMFS-approved acoustic monitoring plan.

(3) Reporting injured or dead marine mammals:

(i) In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by a LOA (if issued), such as an injury (Level A harassment), serious injury, or mortality, Port Dolphin shall immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Southeast Regional Stranding Coordinator, NMFS. The report must include the following information:

- (A) Time and date of the incident;
- (B) Description of the incident;
- (C) Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- (D) Description of all marine mammal observations in the 24 hours preceding the incident;
- (E) Species identification or description of the animal(s) involved;
- (F) Fate of the animal(s); and
- (G) Photographs or video footage of the animal(s).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Port Dolphin to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Port Dolphin may not resume their activities until notified by NMFS.

(ii) In the event that Port Dolphin discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (e.g., in less than a moderate state of decomposition), Port Dolphin shall immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Southeast Regional Stranding Coordinator, NMFS. The report must include the same information identified in §217.156(b)(3)(i) of this chapter. Activities may continue while NMFS reviews the cir-

cumstances of the incident. NMFS will work with Port Dolphin to determine whether additional mitigation measures or modifications to the activities are appropriate.

(iii) In the event that Port Dolphin discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the LOA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Port Dolphin shall report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Southeast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. Port Dolphin shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS.

(4) *Annual reports.* (i) A report summarizing all marine mammal monitoring and construction activities shall be submitted to NMFS, Office of Protected Resources, and NMFS, Southeast Regional Office (specific contact information to be provided in LOA) following the conclusion of construction activities. Thereafter, Port Dolphin shall submit annual reports summarizing operations activities.

(ii) The annual reports shall include data collected for each marine mammal species observed in the project area. Description of marine mammal behavior, overall numbers of individuals observed, frequency of observation, and any behavioral changes and the context of the changes relative to activities shall also be included in the reports. Additional information that shall be recorded during activities and contained in the reports include: date and time of marine mammal detections, weather conditions, species identification, approximate distance from the source, and activity at the construction site when a marine mammal is sighted. Port Dolphin shall extrapolate observed incidences of take to provide an estimate of actual incidences of take.

(5) *Five-year comprehensive report.* (i) Port Dolphin shall submit a draft comprehensive final report to NMFS, Office of Protected Resources, and NMFS,

Southeast Regional Office (specific contact information to be provided in LOA) 180 days prior to the expiration of the regulations. This comprehensive technical report shall provide full documentation of methods, results, and interpretation of all monitoring during the first 4.5 years of the activities conducted under the regulations in this subpart.

(ii) Port Dolphin shall submit a revised final comprehensive technical report, including all monitoring results during the entire period of the LOAs, 90 days after the end of the period of effectiveness of the regulations to NMFS, Office of Protected Resources, and NMFS, Southeast Regional Office (specific contact information to be provided in LOA).

#### §217.157 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, Port Dolphin must apply for and obtain a LOA.

(b) A LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, Port Dolphin must apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, Port Dolphin must apply for and obtain a modification of the LOA as described in §217.158 of this chapter.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.*, mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of a LOA shall be published in the FEDERAL REGISTER within 30 days of a determination.

#### §217.158 Renewals and modifications of Letters of Authorization.

(a) A LOA issued under §§216.106 and 217.157 of this chapter for the activity identified in §217.151(a) of this chapter shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in §217.158(c)(1) of this chapter).

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in §217.158(c)(1) of this chapter) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the FEDERAL REGISTER, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) A LOA issued under §§216.106 and 217.157 of this chapter for the activity identified in §217.151(a) of this chapter may be modified by NMFS under the following circumstances:

(1) Adaptive Management—NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with Port Dolphin regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from Port Dolphin's monitoring from the previous year(s).